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FILED
08/23/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0883-R-2022
Lambert, Kathryn
7.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Anne M. Bradley; David W. Bradley

CASE 43B-0883-R-2022
43B 180000-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE SPRING CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information

obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The October 18, 2022 Order Consolidating Case And Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for then-Claimant Lynn L. Godfrey and the Bozeman Regional Office, Montana Department of Natural Resources and Conservation [“DNRC”]. The February 1, 2023 DNRC Memorandum states that Lynn L. Godfrey did not contact the DNRC, that it appears she is no longer the owner, and noted that the source and point of diversion should be the same as on claim 43B 179999-00. On May 1, 2023 the ownership was updated from Ms. Godfrey to David W. Bradley and Anne M. Bradley. The May 4, 2023 Order Updating Caption And Mailing List and Order Setting Filing Deadline states:

On February 1, 2023 the DNRC Memorandum for this Case was filed. A copy is attached. It states that the source and point of diversion for this claim should be the same as the source and point of diversion on David W. Bradley and Ann M. Bradley claim 43B 179999-00, which is in Case 43B-0735-R-2022. There is also a DNRC Memorandum filed in Case 43B-0735-R-2022 which includes a Verified Motion To Amend Water Right Claim [“Motion”] signed by the Bradleys. The Motion states that the source name should be SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER. The point of diversion legal description on that claim is the SWNESE section 13, T1N, R14E, SWEET GRASS.

Based on these documents, it appears the source and point of diversion legal description for claim 43B 180000-00 should be changed to match those on claim 43B 179999-00 as follows:

- the source should be SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER.
- the point of diversion legal description should be the SWNESE section 13, T1N, R14E, SWEET GRASS.

Pursuant to section 85-2-248, MCA, it is

ORDERED that the deadline is **June 5, 2023** for David W. Bradley and Ann M. Bradley to file their written endorsement or rejection of these changes. If nothing is filed by the deadline, the Court will conclude David W. Bradley and Ann M. Bradley agree with these changes.

Nothing was filed by the Bradleys. These documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as

provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the source is SPRING, UNNAMED TRIBUTARY OF BOULDER RIVER. The source should be SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER.

2. The Preliminary Decree states that the point of diversion legal description is the E2 section 13, T1N, R14E, SWEET GRASS. The legal description should be SWNESE section 13, T1N, R14E, SWEET GRASS. The issue remark should be removed as addressed and resolved.

3. The Preliminary Decree also includes the following notice remark:

CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 43BJ AND WAS INCLUDED IN THE TEMPORARY PRELIMINARY DECREE ISSUED 04/03/1985 . CLAIM WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED 01/16/1985.

This remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the DNRC Memorandum is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

David W. Bradley
Anne M. Bradley
PO Box 1222
Big Timber, MT 59011

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 180000-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID W BRADLEY
PO BOX 1222
BIG TIMBER, MT 59011

ANNE M BRADLEY
PO BOX 1222
BIG TIMBER, MT 59011

Priority Date: JUNE 1, 1950

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS GODFREY SPRING NO. 2

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNESE	13	1N	14E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2	13	1N	14E	SWEET GRASS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

179999-00

180000-00